

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS, AMENDING THE CITY OF LEON VALLEY'S CODE OF ORDINANCES, CHAPTER 8 "OFFENSES AND NUISANCES", ARTICLE 8.05. "FIREWORKS" BY ADOPTING UPDATED PROHIBITIONS ON THEIR POSSESSION AND CREATING EXCEPTIONS; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR PROPER NOTICE AND MEETING; AND PROVIDING FOR SAVINGS CLAUSES AND AN EFFECTIVE DATE.**

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**WHEREAS** the City Council seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the City limits; and

**WHEREAS** the City Council previously adopted regulations prohibiting the sale, barer or exchange of fireworks within the city limits finds that current regulations should be updated consistent with changes in the law so that the possession, use, manufacture, sale, offer for sale and discharge of fireworks will result in bodily injury, death, and property damage; and

**WHEREAS** the City Council finds that the possession, use, manufacture, sale, offer for sale and discharge of fireworks, especially in the confines of a municipality, is dangerous not only to property but also to persons, and results annually in the loss of property and the loss of life; and

**WHEREAS** the City Council finds that the indiscriminate use of fireworks constitutes a menace to life, limb, and health to the users and their associates, increases the hazard and loss by fires, and constitutes a common public nuisance, which should be prevented and abated by law; and

**WHEREAS** the City Council finds that the noise generated by the use or combustion of fireworks and explosives constitutes a public nuisance; and

**WHEREAS** the City Council recognizes that the public display of fireworks is often utilized by the City and other groups to celebrate various events; and

**WHEREAS** the City Council hereby finds and determines that the certain public displays of fireworks when accomplished consistent with fire and safety standards and properly permitted are appropriate; and

**WHEREAS** pursuant to Texas Local Government Code section 51 the City Council has the express authority to adopt and publish an ordinance or police regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out a power granted by law to the municipality; and

**WHEREAS** pursuant to Texas Local Government Code section 217 the City Council has the express authority to prevent and abate any nuisance within the limits of the municipality; and

**WHEREAS** pursuant to Texas Local Government Code section 342.003 the City Council has the express authority to regulate the use of fireworks; and

**WHEREAS** pursuant to Texas Local Government Code section 54 the City Council has the express authority to enforce local ordinances and to prescribe penalties for the violation of those ordinances in accordance with the guidelines of that section.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:**

## **SECTION I.**

**Article 8.05, "Fireworks" is hereby amended as follows:**

**Section 8.05.001 "Definitions" is amended to add:**

"Fire Inspectors" shall mean a Leon Valley Firefighter who is certified by the Texas Commission on Fire Protection as a Fire Inspector.

"Person" shall mean an individual or entity, including an owner, manager, officer, employee, or occupant.

"Public Fireworks Display" shall mean the igniting of fireworks for public or private amusement.

**Section 8.05.002 "Sale Prohibited" is amended as follows:**

Sec. 8.05.002 Public Nuisance and Prohibitions

The possession, use, manufacture, sale, offer for sale, give away, or discharge of fireworks within the city limits of the City of Leon Valley, is hereby declared to be a common and public nuisance and it shall be unlawful for any person to possess, use, manufacture, sell, offer for sale, give away, or discharge fireworks within the city limits of the City of Leon Valley.

**Section 8.05.003 "Discharge Prohibited" is hereby repealed and replaced as follows:**

Section 8.05.003 "Exception"

(a) Exception - Discharge

a. A person seventeen (17) years or older may discharge fireworks within the city limits of Leon Valley if they have obtained a Display Permit to do so, or is a member of an organization which has obtained a Display Permit to do so, from the City of Leon Valley.

b. The person shall maintain at its sole expense insurance coverage:

- i. That is written by an insurance company with an A- or better rating by AM Best and that is submitted and licensed to do business in the State of Texas;
- ii. That is in full force and effect at the time of the Public Fireworks Display;
- iii. That provides one million dollars (\$1,000,000) of liability coverage per occurrence;
- iv. That names the City, its officers, employees, and elected representatives as additional insured;
- v. That provides that any insurance or self insurance maintained by the City shall apply in excess of and not contribute with it;
- vi. A statement that the insured will not cancel the insured's coverage without fifteen (15) days prior written notice to the City of Leon Valley; and
- vii. The person shall file and keep a current certificate of insurance signed by an agent authorized to bind coverage indicating that the person has obtained the aforementioned insurance coverage with the Fire Department.

**The following Sections 8.05.004 through 8.05.006 are added:**

**Section 8.05.004 "Display Permits"**

- (a) No person may conduct a public fireworks display without a Display Permit having been issued.
- (b) All persons who have a public fireworks display shall comply with the regulations as set forth in the Texas Occupations Code Chapter 2154 "Regulation of Fireworks", National Fire Protection 1123 and 1124, and any other standards set forth by Federal and State regulations.
- (c) All persons who assemble, conduct, and/or supervise a public fireworks display shall have the appropriate licenses issued by the State of Texas.
- (d) Fireworks shall not be discharged in such a manner that may create a nuisance or between the hours of 11 pm and 7 am.
- (e) The use of Fireworks shall also be subject to any additional ordinances such as noise and/or assembly.
- (f) An application for a Display Permit to conduct a public fireworks display must

be submitted by an authorized person on a form provided by the City of Leon Valley and shall have the signature of the person applying for the permit. The application shall be filed with the City of Leon Valley at least forty-five (45) calendar days prior to the event. Within twenty (20) calendar days after receipt of the application, the City of Leon Valley shall approve the permit, with or without conditions, or deny the permit. If the application is denied, the reasons for denial shall be stated in the denial notice. The denial of a permit may be appealed to the Fire Chief. This appeal must be submitted, in writing, within five (5) calendar days of the receipt of the notice of denial.

- (g) If issued, such a Display Permit shall be valid only for the date and time period as set forth in the permit. Moreover, the City of Leon Valley shall not be responsible or liable for any injury, death, or damage to property that may occur during the course of the public fireworks display. The permittee and participants shall be responsible or liable for, and shall indemnify and hold the City of Leon Valley harmless for any such injury, death, or damage, and they shall assume all risk of holding and participating in the public fireworks display.
- (h) A non-refundable application fee, as approved by City Council, shall be included with the application.
- (i) Upon the receipt of a permit application, the Fire Inspector must conduct an investigation to determine the following:
  - 1. That the operator of the display is competent and has the appropriate certifications.
  - 2. That the display is of such character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. In addition to reviewing the diagram of the display area submitted with the permit application, the Fire Inspector may want to:
    - a. Inspect the areas selected for the discharge site, spectator viewing area, parking areas, and designated landing (fallout) area;
    - b. For proximate audience displays request a walk-through and representative demonstration of the pyrotechnic special effects as a condition of approval for the issuance of a permit; and
    - c. Request a written plan outlining:
      - i. The manner and location of storage of fireworks both prior to delivery to the display site and the display site;
      - ii. What type of fire protection will be provided at the

discharge site; and

iii. What provisions will be made for crowd control.

#### Section 8.05.005 Inspection by Fire Department

- (a) The sponsor of the display shall arrange for the presence of one, or more Fire Inspectors as may be required by the Fire Marshal. They shall be on duty from the time the fireworks are delivered at the site until the termination of the display and removal of all fireworks and debris from the site. For the purpose of this rule, debris shall include any unignited fireworks or remnants containing explosive material.
- (b) The Fire Marshal shall designate such fire extinguishing equipment as may be required at the display site from the time the fireworks are delivered at the site until the termination of the display and removal of all fireworks and debris from the site.
- (c) See Appendix A9.003 "Miscellaneous fire department fees" for the fees associated with this section. These fees are due to the City of Leon Valley ten (10) City business days prior to the event.

#### Section 8.05.006 Penalties

Any violation of this section is punishable by a fine not exceeding \$2,000.00. Each day any violation of this section continues shall constitute a separate offense. If fireworks are separately wrapped or packaged, the commission or omission of any act prohibited by this article shall be a separate offense as to each such separately wrapped or separately packaged fireworks.

### **SECTION II.**

The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this Ordinance.

### **SECTION III**

That this ordinance shall be cumulative of all provisions of the City of Leon Valley, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

#### SECTION IV

That it is hereby declared to be the intention of the City Council of the City of Leon Valley that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, clause, sentence, paragraph or section.

#### SECTION V

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government

#### SECTION VI

This ordinance shall be effective upon passage and publication as required by State and Local law.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Leon Valley this the 12<sup>th</sup> day of May, 2014.

**APPROVED**



**CHRIS RILEY**  
MAYOR

Attest:



**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

Approved as to Form:



**CHARLES E. ZECH**  
City Attorney



M&amp;C #2014-05-04-14

DATE: MAY 12, 2014

TO: MAYOR AND CITY COUNCIL

SUBJECT: AMENDING THE CITY OF LEON VALLEY'S CODE OF ORDINANCES, CHAPTER 8 "OFFENSES AND NUISANCES", ARTICLE 8.05. "FIREWORKS" BY ADOPTING UPDATED PROHIBITIONS ON THEIR POSSESSION AND CREATING EXCEPTIONS; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR PROPER NOTICE AND MEETING; AND PROVIDING FOR SAVINGS CLAUSES AND AN EFFECTIVE DATE.

**PURPOSE**

This agenda item is intended to amend City ordinance Chapter 8 "Offenses and Nuisances", Article 8.05, Fireworks, which will allow for the permitted use of fireworks during holidays and special events, such as the 4<sup>th</sup> of July Celebration.

The current city ordinance, Article 8.05, prohibit the use of fireworks within the city limits.

The proposed replacement would allow for permitted fireworks displays through regulation, consistent with the city's fire code, and rules detailed in amended sections, 8.05.001, "Definitions", 8.05.002, "Public Nuisance and Prohibitions", and 8.05.003, "Discharge Prohibited", and additions; 8.05.004, "Display Permits", 8.05.005, "Inspection by Fire Department", and 8.05.006, "Penalties".

This action would create a means to regulate displays of fireworks in the city limits.

This action by City Council serves to address the approved Strategic Goals for 2013-2014; specifically item 5 (d), "Leverage existing 4<sup>th</sup> of July activity to promote Leon Valley".

**FISCAL IMPACT**

None

**RECOMMENDATION**

Staff recommends approval.

**S.E.E. IMPACT STATEMENT**

**SOCIAL EQUITY**— *The proposed change works to create a safe environment for all residents to view fireworks.*

**ECONOMIC DEVELOPMENT**— *The proposed change works to enhance events in the City, to include local businesses, which may encourage attendance.*

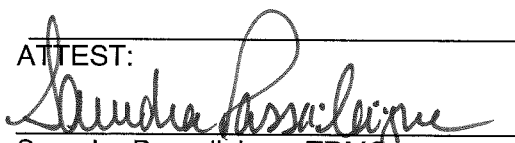
**ENVIRONMENTAL STEWARDSHIP**— *Regulated displays of fireworks discourages illegal and dangerous displays which leads to fire damage and destruction of property.*

APPROVED:  \_\_\_\_\_

DISAPPROVED: \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

  
Saundra Passailaigue, TRMC  
City Secretary